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In re Application of :
ZHAO :
Application No.: 10/510,877 : DECISION ON PETITION
PCT No.: PCT/CN03/00234 :
Int. Filing Date: 03 April 2003 : UNDER 37 CFR 1.10(e)
Priority Date: 10 April 2002 :
Atty. Docket No.: USP2762C-DRSH :
For: BAMBOO FIBRE AND ITS MANUFACTURE :

This is a decision on applicant's "Petition For Filing Information And Request For Status" filed 07 November 2006 in the United States Patent and Trademark Office (USPTO). The petition is being treated as a petition to reconstruct pursuant to 37 CFR 1.10(e).

BACKGROUND

On 03 April 2003, applicant filed international application PCT/CN03/00234 which claimed priority to an earlier U.S. application filed 10 April 2002. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 30 October 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 10 October 2004.

On 08 October 2004, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by a copy of the international application.

On 28 February 2005, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file the proper response.

On 07 November 2006, applicant filed the present petition accompanied by a complete copy of the previous submitted papers, a return postcard and a certificate of mailing with Express Mail mailing number.

DISCUSSION

37 CFR 1.10(e) states:

Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
- (4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

A review of the application file finds applicant's original filing contained therein. As such, it is not necessary to consider the petition under 37 CFR 1.10(e) to accept the copies presently filed as having been filed on 08 October 2004. A review of the application file finds that the Form PCT/DO/EO/905 contained therein is for another application and was not mailed to the correspondence address for this application. It will therefore be vacated. However, a review of the papers filed in this application on 08 October 2004 reveals that applicant did not provide payment of the U.S. basic national fee. None of the boxes pertaining to payment were checked. Therefore, this application is abandoned as to the National stage in the United States.

RECOMMENDATION

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived. Any petition filed under 37 CFR 1.137(a) and/or a petition under 37 CFR 1.137(b) requesting that the application be revived must

meet the criteria indicated in the recent revision of 37 CFR 1.137. See 62 Fed. Reg. 53131 (October 10, 1997); 1203 Off. Gaz. Pat. Office 63 (October 21, 1997) (Effective Date: 01 December 1997).

This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

Applicant's petition under 37 CFR 1.10 is **DISMISSED as moot.**

The Form PCT/DO/EO/905 mailed 28 February 2005 is hereby **VACATED.**

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Abandonment (Form PCT/DO/EO/909).



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